IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.143 OF 2007

Tmt. Chandramathi
W/o. Deilson .. Petitioner

Vs.

1. State. rep. by its Secretary
to Government,
Prohibition & Excise Department,
Secretariat
Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus directing the respondents to produce the detenu viz., Stalin Jose, son of Deilson, who is now detained in Central Prison, Chennai in pursuance of the detention order passed by the 2nd respondent on 9.11.2006 in Memo No.275/BDFGISSV/2006, before this Court and set him at liberty.

For Petitioner : Mr.S. Swamidoss Manokaran

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

P.K. MISRA, J

The mother of the detenu has filed this Habeas Corpus Petition under Article 226 of the Constitution of India for quashing the order of detention dated 9.11.2006 passed under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982

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(Tamil Nadu Act 14 of 1982) on the allegation that the detenu is a Goonda within the meaning of the said Act.

2. The detenu, who is aged about 22 years, came to adverse notice in eight cases indicated in the grounds of detention. From the tabular column furnished in the grounds of detention it appears that R-6 Kumaran Nagar PS Cr.No.40/2006 registered under Section 392 r/w.34 IPC was charged and pending trial in C.C.No.926 of 2006. The second adverse case R-6 Kumaran Nagar PS Cr.No.44/2006 registered under Section 379 IPC was charged and pending trial in C.C.No.925 of 2006. The third adverse case R-6 Kumaran Nagar PS Cr.No.45/2006 registered under Section 379 IPC was charged and pending trial in C.C.No.1987 of 2006. The fourth adverse case R-6 Kumaran Nagar PS Cr.No.65/2006 registered under Section 379 IPC was charged and pending trial in C.C.No.1988 of 2006. The fifth adverse case R-6 Kumaran Nagar PS Cr.No.66/2006 registered under Section 379 IPC was charged and pending trial in C.C.No.1989 of 2006. The sixth adverse case R-6 Kumaran Nagar PS Cr.No.68/2006 registered under Section 379 IPC was charged and pending trial in C.C.No.1990 of 2006. The seventh adverse case R-6 Kumaran Nagar PS Cr.No.237/2006 registered under Section 380 IPC was charged and pending trial in C.C.No.3907 of 2006. The second adverse case R-6 Kumaran Nagar PS Cr.No.44/2006 registered under Section 379 IPC was charged and pending trial in C.C.No.925 of 2006. The eighth adverse case R-6 Kumaran Nagar PS Cr.No.277/2006 registered under Section 392 IPC was charged and pending trial in C.C.No.4004 of 2006. The occurrence on which the ground case in J-3 Guindy Police Station Crime No.1560/2006 has been registered under Sections 336, 307 and 506(ii) IPC is dated 6.9.2006. In the grounds of detention it is narrated that on the said date the detenu and two other persons, namely, Munusamy and Selvam, came near a vegetable shop at Maduvankarai in motor cycle. The motor cycle hit a street dog which started barking. At that time, one Selvam, who was driving the motor cycle threw an empty beer bottle on the road which broke into pieces and one of the broken peace hit Tr. Singaroyan, who is sitting on the roadside platform. Tr. Singaroyan shouted against three persons. Immediately three persons got down from the motor cycle and abused such person in filthy language. At that time the detenu took out a better bottle and broke the same and rushed to stab such Tr. Singaroyan, but one Tr. Arun Kumar prevented the detenu. Immediately the detenu uttered abusive words and stabbed Tr.Arun Kumar over his neck. The other persons raised hue and cry. The public came to the spot to rescue and apprehend. The other person Munusamy took a beer bottle, hurled the same by uttering abusive words. The bottle fell on the roadside. The public ran out of danger. Taking advantage of the panic situation, three persons including the detenu escaped from the spot on the motor cycle. Arun Kumar was taken to Guindy Balaji Hospital for treatment and one Thiru. Chermakumar proceeded to J-3 Guindy police station and lodged

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a complaint on the basis of which the ground case was registered. The Inspector of Police during the course of investigation arrested the detenu on 11.9.2006 and subsequently the detenu was produced before IX Metropolitan Magistrate, Saidapet and was remanded till 25.9.2006. His remand was extended periodically till 17.11.2006. The investigation into the crime was not yet over. In the above background, the detaining authority passed an order to detain the detenu as a Goonda by observing inter alia as follows :-

> "4. I am aware that Thiru Stalin Jose is in remand in J.3 Guindy Police Station Crime No.1560/2006 and he has not moved any bail application so far. I am also aware that there is real possibility of his coming out on bail by filing bail application before Sessions Court or High Court since in similar cases bails are granted by the Sessions Court or High Courts. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order."

3. In the above context, learned counsel for the petitioner has raised the following contentions :-

(1) The order of detention has been mechanically passed without application of mind to the relevant facts and circumstances.

(2) The conclusion of the detaining authority that the detenu is likely to be released on bail is not based on any material on record and it is merely the ipse dixit of the detaining authority.

4. While amplifying the first ground, learned counsel for the petitioner has pointed out that as per the document available at Page No.137 of the booklet, the sponsoring authority has indicated the alleged involvement of the detenu in J-3 Police Station Cr.No.1922/2005 and J-3 Police Station Cr.No.1923/2005, which were registered under Section 384 IPC. However, no material had been placed before the detaining authority nor there is any reference to those cases in the grounds of detention which would amount to non-application of mind on the part of the detaining authority. Similarly it is contended that, while noticing about the adverse cases, it has been indicated as if offences under Section 379 IPC had been committed and chargesheet had been filed in Cr.Nos.44, 45, 65, 66 and 68 of 2006, but the relevant documents, namely, the chargesheet, mahazar, etc., in these cases indicate that offence under Section 392 had been committed in all such cases, which was a graver offence. It has been contended that "this vital factor was not considered by the detaining authority who has mechanically signed the papers". Similarly it has been stated that the remand report available at Page No.136 of the booklet indicates that the detenu was arrested on 11.9.2006, confession was recorded at 8.10 hours and watch was recovered in respect of Cr.No.1323/2005 at 9.00 hrs. "But no such crime was shown against the detenu and the

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detaining authority without considering this vital factors ... has mechanically signed the paper." It is further specifically contended in the grounds of detention and submitted at the time of hearing that the documents at Page Nos.9, 17, 26, 35, 44, 53, 64 and 70 clearly indicate that the detenu was produced in respect of several criminal cases under P.T. Warrant on 31.10.2006 and the cases were adjourned to 14.11.2006 and the detenu was produced from the prison under AR escort and sent back to jail, but while considering the possibility of coming out on bail, the detaining authority has not considered the fact that the detenu had been remanded in connection with several cases other than the ground case which would show non-application of mind on the part of the detaining authority.

5. A detention order is essentially passed on the subjective satisfaction of the detaining authority on the materials produced before such authority. Since the order of detention has the effect of affecting the liberty of a person, detaining authority is required to consider carefully the materials on record before passing any order of detention and it is not expected that an order of detention is mechanically signed by the detaining authority.

6. It is no doubt true that the detaining authority has referred to eight adverse cases, but the booklet furnished before the detaining authority by the sponsoring authority clearly indicates about the alleged involvement of the detenu in three other crimes. It is no doubt true that the alleged involvement of the detenu in those crimes in addition to the adverse cases noticed would obviously strengthen the case for passing an order of preventive detention. But the fact that the detaining authority has not at all made any reference to those cases is indicative of non-application of mind to a very vital aspect. Similarly it is apparent that the detenu was produced under P.T. Warrant and the materials prima facie indicate that he had been remanded in several cases. However, the order of detention, ultimately signed by the detaining authority, does not indicate about the awareness of the detaining authority relating to such relevant facts.

7. Learned counsel appearing for the State has tried to explain before us that the detenu had been released on bail in such cases and therefore non-reference to those cases in the grounds of detention cannot be construed as non-application of mind.

8. It is of course true that the detenu has been released on bail in those cases and may be the detenu, if released on bail in the ground case, need not file any formal application in other adverse cases, but would merely file a petition to recall the P.T. Warrant and execute a bail bond to be released on bail. However, one would ordinarily expect the detaining authority to notice all

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such relevant aspects. In the above context, the contention of the counsel for the petitioner is that the adverse cases, as per the narration in the grounds of detention, indicate as if the offence under Section 379 IPC had been committed in five adverse cases already indicated whereas the chargesheets filed clearly indicate that offence under Section 392 IPC had been committed. He has further submitted that this aspect also cannot be considered to be immaterial, as, if the detaining authority would have noticed that chargesheet had been filed in five cases under Section 392 IPC, which is a much serious offence as compared to 379 IPC., may be the conclusion of the detaining authority that the detenu is likely to be released on bail in the ground case could have been different.

9. This latter submission made by the learned counsel for the petitioner cannot be simply wished away by stating that the chargesheeted offence under Section 392 being more serious, it is obvious that the detaining authority would have come to the same conclusion. The question here is the possibility of the detenu being released on bail in the ground case. It is quite well known that, while considering the question of bail, a court is also expected to consider the past background of the accused and if it is found that the accused is already involved in several serious cases, the Court may be disinclined to grant bail. It is no doubt true that the detaining authority is required to consider the possibility of the proposed detenu being released on bail on the basis of relevant materials on record. If it would be made aware to the detaining authority that a proposed detenu is already involved in several serious cases, the detaining authority while exercising his subjective satisfaction may come to the conclusion that in such a murky background possibility of the detenu being released on bail is non-existent. In other words, seriousness of the allegations in the previous case is also a relevant consideration for the detaining authority while arriving at a satisfaction on the possibility of coming out on bail in the ground case. Since the possibility of coming out on bail in the ground case is a matter or subjective satisfaction of the detaining authority (but of course on the basis of cogent materials on record), all the relevant factors are required to be considered by such detaining authority. The fact that in the present case the detaining authority was labouring under a misconception regarding the nature of allegation in many of the adverse cases was a relevant circumstance to be considered while dealing with the question of possibility of coming out on bail and the same having been not done, this would have the effect of vitiating the ultimate satisfaction of the detaining authority.

10. Apart from the above, learned counsel for the petitioner has also pointed out that in para 4 of the grounds of detention, the relevant portion of which is already extracted, the conclusion of the detaining authority that there is a real

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possibility of the detenu being released on bail in connection with ground case, is based on the mere ipse dixit of the detaining authority and not on any material on record. In support of such conclusion, the learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court in (2006)1 M.L.J. (Crl.) 539 (T.V. SARAVANAN alias S.A.R. PRASANNA VENKATACHARIAR CHATURVEDI v. STATE, THROUGH SECRETARY AND ANOTHER) and the Full bench decision of this Court in 2005(4) CTC 497 (K. THIRUPATHI v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT AT TIRUCHIRAPALI AND ANOTHER)

11. In our considered opinion, the ratio of the aforesaid decision of the Supreme Court as well as the decision of the Full Bench is clearly applicable to the present case and accordingly the detention order is also required to be quashed on the said ground.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The Secretary
to Government,
Prohibition & Excise Department,
Secretariat
Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai 8.

3. The Public Prosecutor,
High Court, Madras.

4. The Superintendent
Central Prison, Chennai.

5. The Joint Secretary to Government
Public (Law and order) Fort St. George, Chennai.

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